Leong Wee Shing v Chai Siew Yin

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S2–24–814 OF 1999
KAMALANATHAN RATNAM J
25 NOVEMBER 1999

Family Law *— Marriage — Non-registration with Registry of Marriages — Chinese customary, proof of — Question of validity — Law Reform (Marriage and Divorce) Act 1976 s 34*

The plaintiff applied for an order that her marriage to one Lau Yen Yoon ('the deceased') performed pursuant to Chinese customary rites on 19 November 1995 be declared valid. In support of her application, the plaintiff affirmed an affidavit to confirm her marriage to the deceased and exhibited to her affidavit her wedding invitation card, wedding photographs of herself and the deceased, and photographs taken at the wedding dinner, and also her statutory declaration affirming their marriage. There had been no proceedings so far to show that their relationship of husband and wife had ceased. She believed that their marriage was according to law. The defendant, who is the mother-in-law of the plaintiff, contended that the marriage between the plaintiff and the deceased was void for non-registration at the Registry of Marriages.

Held, granting order in terms:

(1) There was no issue raised by the defendant in respect of the 'tea-drinking ceremony'. Therefore, it must be taken that such a ceremony had indeed taken place. Considering the fact that the deceased and the plaintiff had taken wedding photographs, had printed and sent out wedding invitation cards, had invited guests for the wedding dinner wherein the defendant herself was present, there were sufficient grounds to find that there was a valid marriage subsisting between the plaintiff and the deceased (see p 167C–E); *Re Estate of Chong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ 464 followed.

(2) The requirement of s 34 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'), that a marriage had indeed taken place, had been satisfied. The plaintiff did not even have to show that there was a marriage valid according to Chinese customary rites so long as there was a marriage. The very act of printing and sending a wedding invitation inviting friends and relatives to witness the wedding between the plaintiff and the deceased and also the 'tea-drinking ceremony' and the further request to attend the wedding dinner that same night (all stated in the wedding invitation card) clearly reflected the act of marriage having taken place (see p 167E–G).

(3) The marriage therefore had been properly solemnised. Granted it had not been registered, but that was of no consequence.

Section 34 of the Act takes care of that and validates the marriage (see p 168D–E).

[Bahasa Malaysia summary

Plaintif telah memohon untuk suatu perintah agar perkahwinan beliau dengan seorang Lau Yen Yoon ('si mati') yang diadakan menurut upacara adat Cina pada 19 November 1995 diisytiharkan sah. Sebagai menyokong permohonan beliau, plaintif telah mengakui satu afidavit mengesahkan perkahwinan beliau dengan si mati dan mengekshibitkan kepada afidavit beliau kad jemputan perkahwinan beliau, gambar-gambar perkahwinan beliau dan si mati, dan gambar-gambar yang diambil di majlis makan malam, dan juga akuan berkanun beliau yang mengesahkan perkahwinan mereka. Tiada prosiding setakat ini menunjukkan bahawa hubungan suami isteri antara mereka telah tamat. Beliau mempercayai bahawa perkahwinan mereka adalah menurut undang-undang. Defendan, ibu mertua plaintif, menegaskan bahawa perkahwinan antara plaintif dan si mati adalah tidak sah kerana tidak didaftarkan di Pejabat Pendaftaran Perkahwinan.

Diputuskan, membenarkan permohonan:

(1) Tiada persoalan dibangkitkan oleh defendan berhubung dengan 'majlis minum teh'. Oleh itu, majlis sedemikian mestilah dianggap telah dilangsungkan. Dengan mempertimbangkan hakikat bahawa si mati dan plaintif telah mengambil gambar-gambar perkahwinan, mencetak dan menghantar kad-kad jemputan perkahwinan, menjemput tetamu-tetamu ke majlis makan malam perkahwinan di mana defendan sendiri telah hadir, maka terdapat alasan-alasan yang mencukupi untuk mendapati bahawa wujud satu perkahwinan yang sah antara plaintif dan si mati (lihat ms 167C–E); *Re Estate of Choong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997 4 MLJ 464 diikut.

(2) Keperluan s 34 Akta Memperbaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut'), bahawa suatu perkahwinan telahpun berlangsung, telah dipenuhi. Plaintif tidak perlu menunjukkan bahawa wujud satu perkahwinan yang sah menurut upacara adat Cina asalkan satu perkahwinan telah berlangsung. Tindakan mencetak dan menghantar jemputan perkahwinan menjemput rakan-rakan dan saudara-mara untuk menyaksikan perkahwinan antara plaintif dan si mati dan juga 'majlis minum teh' dan seterusnya permintaan untuk hadir ke majlis makan malam pada malam yang sama (semuanya dinyatakan di dalam kad jemputan perkahwinan tersebut) dengan jelas menggambarkan bahawa perbuatan untuk berkahwin telah berlaku (lihat ms 167E–G).

(3) Perkahwinan tersebut oleh demikian telah dilangsungkan dengan betul. Dengan anggapan bahawa ia tidak didaftarkan, perkara

tersebut tidak membawa apa-apa kesan. Sesyen 34 Akta tersebut telah meneliti perkara tersebut dan mengesahkan perkahwinan tersebut (lihat ms 168D–E).]

[*Editorial note*: The defendant has appealed to the Court of Appeal vide Appeal No W–02–750–99.]

Notes

For cases on proof of Chinese customary marriages, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2668–2670.

Cases referred to

Estate of Chong Swee Lin, Re; Kam Soh Keh v Chan Kok Leong & Ors [1997] 4 MLJ 464 (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 4, 5(4), 27, 34

Hazman Ahmad (*Hazman & Associates*) for the plaintiff.
Alex Lee (*Ghee Meng & Co*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J:

Application

This is an application by the plaintiff for the following orders:

(1) that her marriage to one Lau Yen Yoon (deceased) performed pursuant to Chinese customary rites be declared valid;

(2) that she has a legal right to claim her share of the properties registered in both the names of the plaintiff and the deceased;

(3) that she has a legal right to make a claim over all properties registered in the name of the deceased;

(4) that she has a legal right to claim all properties jointly acquired during the life time of the deceased;

(5) that she has a legal right to claim all jewellery given to her as gifts during the wedding which are in the safe deposit box kept by the deceased in the bank; and

(6) such other relief as the court thinks fit and proper.

The affidavits

In support of her application the plaintiff affirmed an affidavit encl 2. She confirmed that she had married one Lau Yen Yoon (the deceased) according to Chinese customary rites on 19 November 1995. She was given

A gifts of jewellery during the wedding on 20 November 1995 which took place at Cha'ah, Johor Darul Takzim. After the wedding she lived with the deceased at No 7, Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala Lumpur. She exhibited to her affidavit her wedding invitation card, wedding photographs of herself and the said deceased, and photographs taken at the wedding dinner. Amongst the many photographs exhibited was
B one taken of the defendant, the mother of the deceased, and another of her, mingling with the guests at the dinner. The plaintiff also exhibited her statutory declaration affirming her marriage to the deceased. In her affidavit she confirmed that there has been no proceedings so far to show that their relationship of husband and wife had ceased, She believed that their
C marriage was according to law. She and the deceased continued with their business which was carried on at No 7, Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala Lumpur.

On 7 March 1999 at about 8.30am, the deceased met with a motor accident and died the same day at the scene of the accident. The plaintiff exhibited the deceased's death certificate which incidentally showed the
D deceased's address as the same address given by the plaintiff. The deceased was buried in Johor. When she returned to her place of business on 26 April 1999 she found the same ransacked. She complained that she has been prevented by the defendant from entering the place of business. As the lawful wife of the deceased she claimed entitlement to all or a part of the
E assets, registered in the names of the deceased and herself or registered only in the name of the deceased. The assets she claimed entitlement to, included the business and the premises known as No 7 Jalan Pandan Indah 4/4, Taman Pandan Indah, Kuala Lumpur. She also claimed entitlement to all assets registered in the name of the deceased and presently in the possession of the deceased's relatives. This included the log book
F No 4960451 for motorcycle WFM 986, motor insurance cover note in respect of the said motorcycle and she further listed numerous items in the affidavit.

In her reply, the defendant, who is the mother-in-law of the plaintiff, denied that the wedding dinner referred to by the plaintiff was to validate
G the marriage between the plaintiff and her son. She contended that even if there was such a dinner, the very fact that the marriage was not registered at the registry of marriages, showed that there could be no valid marriage between the plaintiff and her deceased son. She exhibited a computer search from the Registry of Marriages Malaysia to show that no such marriage between the plaintiff and her deceased son had been found to have
H been registered at the Registry of Marriages Malaysia. As a result thereof she maintained that even if there was such a marriage, it was void and ought not to be recognised as a valid marriage according to law. She further argued that even if there was such a Chinese customary marriage as contended by the plaintiff such a marriage was also void for non-registration. She denied the plaintiff's allegation that after the wedding dinner, her deceased son left
I with the plaintiff for Kuala Lumpur. She contended that he remained in Cha'ah, Johor, where he helped the defendant to run a school canteen whilst the plaintiff returned to her business in Kuala Lumpur. The

defendant stated in her affidavit that in respect of her son's death she had applied for and had been granted the letters of administration on 16 July 1999. Although she had exhibited the petition she did not exhibit the grant. She argued that since there was no will she was the rightful beneficiary of the deceased. She contended that the plaintiff had made no contribution especially in the form of monetary contribution to the business and hence ought not to be entitled to any claim upon the said business.

In her reply the plaintiff averred that their marriage had the blessings of the deceased's family. She maintained that the wedding dinner was an affirmation of their marriage and that it was attended to by relatives of both families. Although her marriage to the deceased was not registered she maintained it was a valid marriage pursuant to customary law.

Findings of the court

It is the case of the defendant that since there has been no registration of the marriage between the plaintiff and the deceased, the said marriage is void and ought not to be recognised. Mr Lee for the defendant relied fully on s 27 of the Law Reform Marriage and Divorce Act 1976 ('the Act'). The said section reads as follows:

> Registration
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> The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

It is not in dispute that the appointed date referred to in the said search is 1 March 1982. To my mind the defendant's submission ignores the provision of s 34 of the Act. The said section reads as follows:

> Legal effect of registration
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> Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

The object of the Act was to regulate or regularise aspects of marriage and divorce of non Muslims in the country. This was the spirit and intent of the Act. Surely therefore it cannot be the intention of Parliament that all marriages that had occurred before 1 March 1982 and not registered, ought to be held void and not recognized as valid. The serious consequences of such an interpretation would be mind boggling. For example, such an interpretation would have the effect of bastardising issues, and causing disarray upon inheritance. It is to avert such a catastrophe that s 34 was introduced. This has the effect of validating such marriages that were not registered before 1 March 1982. Therefore, now all marriages are valid. The only issue that the defendant can possibly raise is, was there a valid marriage in this case. If there is a valid marriage then clearly s 34 of the Act would validate this marriage.

In *Re Estate of Chong Swee Lin; Kam Soh Keh v Chan Kok Leong & Ors* [1997] 4 MLJ 464, the petitioner, claiming to be the lawful husband of the

deceased filed a petition for letters of administration to the deceased's estate. The petition was contested by the respondents who were the lawful children of the deceased. The respondents claimed that the petitioner was never the lawful husband of the deceased. In that case, the defendants relied on expert evidence on what constitutes a Chinese customary marriage. His Lordship James Foong J held that this proof that there was a Chinese customary marriage, was essential since the petitioner claimed that his marriage to the deceased had taken place before the coming into force of the Act which by s 4 recognises subsisting valid marriages solemnised under any law, religion, custom or usage before the Act became effective. Based on the expert evidence with regard to the 'tea-drinking ceremony' which the expert said formed an integral part of a Chinese customary marriage, and since there was clear evidence of the absence of such a ceremony his Lordship held that the said marriage could not have been properly constituted and hence he dismissed the said petition.

In the case before me, there was no issue raised by the defendant in respect of the 'tea-drinking ceremony'. Therefore, I must take it that such a ceremony had indeed taken place. I am satisfied that considering the fact that the deceased and the plaintiff had taken wedding photographs, had printed and sent out wedding invitation cards, had invited guests for the wedding dinner wherein the defendant herself was present, there are sufficient grounds to find that there was a valid marriage subsisting between the plaintiff and the deceased. Whilst I agree that s 4 of the Act refers to customary marriages solemnized prior to 1 March 1982, s 34 is the proper section to validate this marriage.

I am of the view that pursuant to s 34 of the Act the plaintiff does not even have to show that there was a marriage valid according to Chinese customary rites so long as there was a marriage. It is pertinent to note that s 34 refers to the existence of 'any marriage' and it is also relevant to note that the word 'marriage' is not defined in the definition section. It is therefore necessary to look at its every day meaning attributed to 'marriage' as understood by the man in the street. *Chambers Dictionary* (20th Ed) defines 'marriage' as 'the ceremony, act or contract by which a man and a woman become husband and wife'. It is my judgment therefore that the very act of printing and sending a wedding invitation inviting friends and relatives to witness the wedding between the plaintiff and the deceased and also the 'tea-drinking ceremony' and the further request to attend the wedding dinner that same night (all stated in the wedding invitation card) clearly reflect the act of marriage having taken place on 19 November 1995. It is my judgment therefore that the requirement of s 34, that a marriage had indeed taken place, has been satisfied.

There is another section that I must consider, that is s 5(4) of the Act which reads as follows:

> Disability to contract marriages otherwise than under this Act
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> ...
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> (4) After the appointed date, no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III.

Section 9 of Part III reads:

> Persons by whom marriages may be solemnised
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> A marriage under this Act may be solemnised only by a Registrar.

Sections 22 and 24(1) of the Act provide for the solemnisation of the marriage and consequently s 25 provides that immediately after the solemnisation, the Registrar shall enter the prescribed particulars in the marriage register. In the present case the relevant section would be s 22(1)(c) which reads as follows:

> Solemnisation of marriages
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> (1) Every marriage under this Act shall be solemnised —
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> ...
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> (c) in a church or temple or at any place of marriage in accordance with s 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

Therefore, pursuant to the wedding invitation card, a wedding ceremony 'permitted by the custom or usage' which both the plaintiff and the deceased practised, together with the 'tea-drinking ceremony' had been performed at a place as stated in the invitation card. The marriage therefore has been properly solemnised. Granted it has not been registered, but that is of no consequence. Section 34 of the Act takes care of that and validates the marriage.

However, having considered all issues I was only prepared to grant an order in terms of the first prayer, namely, for an order that the plaintiff's marriage to one Lau Yen Yoon (deceased), performed pursuant to Chinese customary rites be declared valid. I declined to make an order in terms of the other prayers asked for because with my finding declaring her marriage as valid the legal consequences of such finding must follow.

Order in terms of the first prayer only granted.

Reported by Ezatul Zuria Azhari